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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,380	03/12/2004	Miguel Acosta	52028/RVW/A789	8844
23363	7590	12/29/2005	EXAMINER	
CHRISTIE, PARKER & HALE, LLP			ALI, SHUMAYA B	
PO BOX 7068			ART UNIT	
PASADENA, CA 91109-7068			PAPER NUMBER	

3743

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,380

Applicant(s)

ACOSTA, MIGUEL

Examiner

Shumaya B. Ali

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>detailed action</u> . |

DETAILED ACTION

Response to Amendment

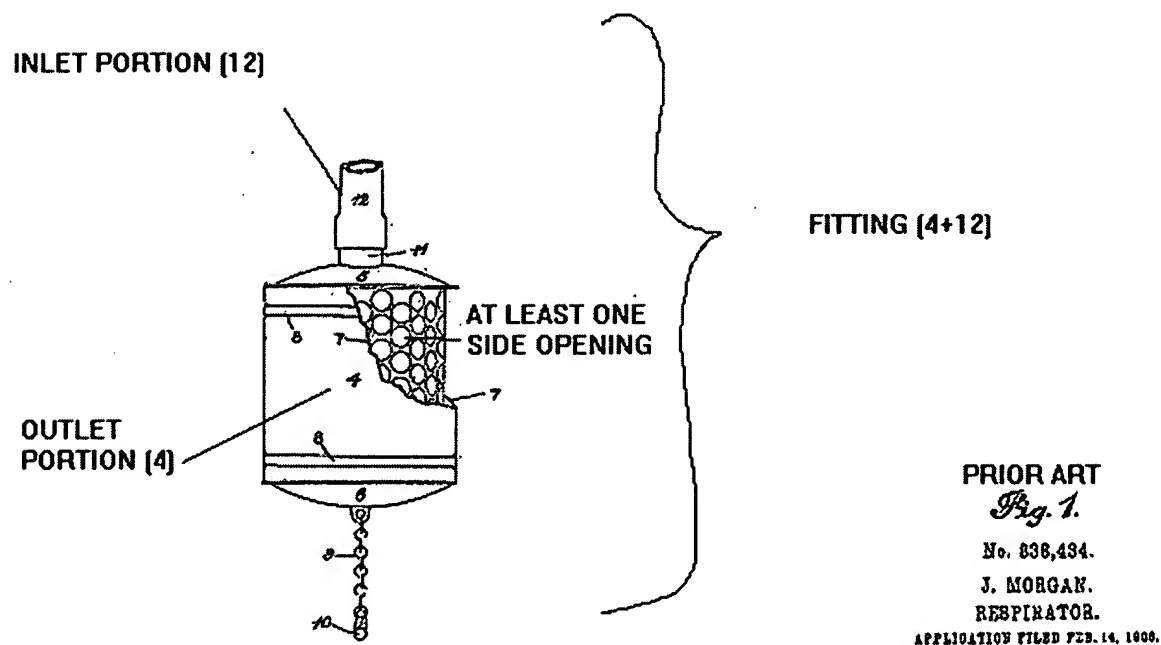
In response to the office action mailed on 7/12/05, the applicant has added new claims 18-20, and withdrawn claim 17, currently claims 1-16, 18-20 are pending.

Response to Arguments

1. Applicant's arguments filed 10/17/05 have been fully considered but they are not persuasive.
2. Applicant's argument regarding non-analogous argument presented on page 7, lines 18-20, is fully considered, however not persuasive since the applicant's **claimed invention** is "**a fitting**", which according to the Webster's dictionary definition is the degree of precision with which surfaces are adjusted or adapted to each other in a machine or collection of parts. Therefore, Morgan's reference object 4 as disclosed in figures 1-2 used for the ground of rejection is considered valid, since object 4 is precisely adapted to a tubing 12.
3. The Applicant additionally stated on page 7, lines 6-8, that "the invention describe a fitting for retrofitting to a tracheostomy tube", however the underlined limitation is considered recitation of the intended use, which do not seem to hold patentable weight (a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim).

Art Unit: 3743

4. Regarding “the cited reference does not teach nor suggest the limitation of a fitting for a tracheostomy tube having an outlet portion with at least one side opening” (page 7 lines 25-26): a labeled figure 1 has been provided to indicate all limitations of fitting are disclosed in the prior art reference to Morgan.



Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 18-20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that

Art Unit: 3743

the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 18 recites “sleeve” which is not found in the original disclosure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Morgan US Patent 838,434.

7. As to claim 1, Morgan discloses a fitting (fig.2 reference objects 4 and 12) for retrofitting to a tracheostomy tube comprising: an inlet portion (fig.1 reference object 11) for attachment to an outlet structure of the tracheostomy tube; and an outlet portion (a tube inherently has an inlet and outlet portion, see fig.1 reference object 4 and 11 which is capable of fitting to an outlet of any tube, including a tracheostomy tube) for extending from the outlet structure of the tracheostomy tube, wherein the outlet portion is connected to the inlet portion, and wherein the outlet portion comprises at least one side opening (page 1 lines 75-76).

8. As to claim 2, Morgan discloses the tracheostomy tube fitting of claim 1, wherein the outlet portion comprises a plurality of rows of side openings and a plurality of columns of side openings (see fig.1 reference object 4 has a plurality of side opening, see also page 1 lines 75-76).

Art Unit: 3743

9. **As to claim 3, Morgan discloses** the tracheostomy tube fitting of claim 2, wherein each row is offset from an adjacent row and wherein each column is offset from an adjacent column **(clearly depicted in fig.2 reference object 4).**

10. **As to claim 4, Morgan discloses** the tracheostomy tube fitting of claim 1, further comprising a filter **(fig.1 reference object 7)** attached to the outlet portion for filtering air that enters the fitting through the at least one-side opening.

11. **As to claim 5, Morgan discloses** a fitting for retrofitting to a tracheostomy tube comprising: a hollow cylinder **(fig.1 reference object 4)** having an inner diameter, an outer diameter, an inlet end opening and an outlet end opening the cylinder further comprising: an inlet portion **(object 4 is considered tubular, therefore inherently has an inner and outer diameters and an inlet and outlet openings that are capable of attaching to either an inlet or outlet of any tube)**, for attachment to an outlet structure of the tracheostomy tube, wherein the inlet portion comprises the inlet end opening; and an outlet portion for extending from the outlet structure of the tracheostomy tube, wherein the outlet portion is connected to the inlet portion, and wherein the outlet portion comprises the outlet end opening and at least one side opening **(page 1 lines 75-76).**that extends from the inner diameter to the outer diameter.

12. **As to claim 6, Morgan discloses** the tracheostomy tube fitting of claim wherein the outlet portion comprises a plurality of rows of side openings that extend from the inner diameter to the outer diameter and a plurality of columns of side openings that extend from the inner diameter to the outer diameter **(see fig.1 reference object 4 has a plurality of side opening, see also page 1 lines 75-76).**

Art Unit: 3743

13. As to **claim 7**, **Morgan discloses** the tracheostomy tube fitting of claim 6, wherein each row is offset from an adjacent row and wherein each column is offset from an adjacent column **(clearly depicted in fig.2 reference object 4)**.

14. As to **claim 8**, **Morgan discloses** the tracheostomy tube fitting of claim 5, further comprising a filter **(fig.1 reference object 7)** attached to the outlet portion for filtering air that enters the fitting through the at least one-side opening.

15. As to **claim 9**, **Morgan discloses** a tracheostomy tube comprising: an inlet structure **(fig.1 reference object 12)** for insertion into a patient's trachea; and an outlet structure **(fig.1 reference object 4)** for extending from an opening in the patient's neck, wherein the outlet structure is connected to the inlet structure, and wherein the outlet structure comprises at least one side opening **(see fig.1 reference object 4 has a plurality of side opening, see also page 1 lines 75-76)**.

16. As to **claim 10**, **Morgan discloses** the tracheostomy tube of claim 9, wherein the outlet structure comprises a plurality of rows of side openings and a plurality of columns of side openings **(see fig.1 reference object 4 has a plurality of side opening, see also page 1 lines 75-76)**.

17. As to **claim 11**, **Morgan discloses** the tracheostomy tube of claim 10, wherein each row is offset from an adjacent row and wherein each column offset from an adjacent column **(clearly depicted in fig.2 reference object 4)**.

18. As to **claim 12**, **Morgan discloses** the tracheostomy tube of claim 9, further comprising a filter **(fig.1 reference object 7)** attached to the outlet structure for filtering air that enters the tracheostomy tube through the at least one-side opening.

Art Unit: 3743

19. As to **claim 13**, **Morgan discloses** a tracheostomy tube comprising: an inlet structure (**fig.1 reference object 12**) for insertion into a patient's trachea; and an outlet structure (**fig.1 reference object 4**) for extending from an opening in the patient's neck, wherein the outlet structure is connected to the inlet structure (**page 1 lines 100-101**), and wherein the outlet structure comprises an inner diameter, an outer diameter and at least one side opening that extends from the inner diameter to the outer diameter (**object 4 is considered tubular, therefore inherently has an inner and outer diameters and an inlet and outlet openings that are capable of attaching to either an inlet or outlet of any tube**),

20. As to **claim 14**, **Morgan discloses** the tracheostomy tube of claim 13, wherein the outlet structure comprises a plurality of rows of side openings that extend from the inner diameter to the outer diameter and a plurality of columns of side openings that extend from the inner diameter the outer diameter (**see fig.1 reference object 4 has a plurality of side opening, see also page 1 lines 75-76**).

21. As to **claim 15**, **Morgan discloses** the tracheostomy tube claim 14, wherein each row is offset from an adjacent row and wherein each column is offset from an adjacent column (**clearly depicted in fig.2 reference object 4**).

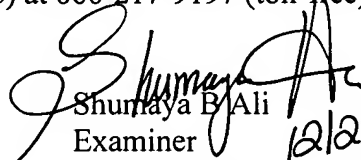
22. As to **claim 17**, **Morgan discloses** the tracheostomy tube of claim 13; further comprising a filter (**fig.1 reference object 7**) attached the outlet structure for filtering air that enters the tracheostomy tube through the at least one-side opening.

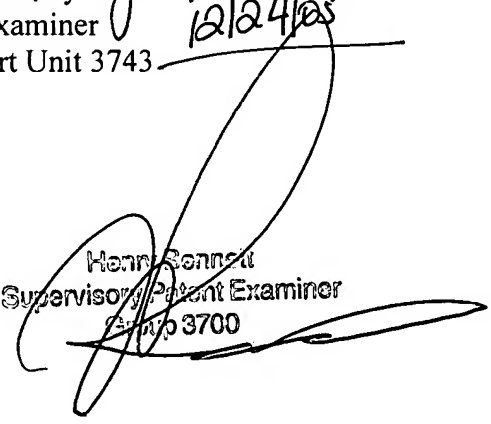
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

Art Unit: 3743

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Shumaya B. Ali
Examiner
Art Unit 3743
12/24/05


Henry Bennett
Supervisory Patent Examiner
Art Unit 3700